IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2782 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HITESH BHIKHABHAI GONDALIA

Appearance:

Mr.K.G. Sheth, Assistant GOVERNMENT PLEADER,
for Petitioner

MR TR MISHRA for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/11/2000

ORAL JUDGEMENT

Rule. By consent of parties, the matter is taken up for final hearing today.

The respondent herein has raised industrial

dispute before the Labour Court, Rajkot as Reference (LCR) No.1313 of 1989. It is the case of the workman that he was working as a Peon since more than three years at a monthly rate of Rs.450/- and without following any procedure of law, his services were terminated with effect from 31st March, 1989. It is also his say that even his juniors were continued in service. Therefore, on this and such other grounds, dispute was raised by the concerned workman.

The employer filed written statement at Exhibit 9 and stated that the Reference was not maintainable, that it was time barred, and that the Court has no jurisdiction to decide the dispute. It was stated that the concerned workman left the services on his own and, therefore, there was no question of terminating the services of the petitioner. The Labour Court, Rajkot, after recording evidence of both the sides and after hearing the arguments of concerned Advocates, passed an order of reinstatement with full back wages. The said order is impugned in the present Special Civil Application.

At the time of hearing, it was argued by Mr.K.G. Sheth, learned AGP, that the concerned workman was serving in the Department of Joint Director of Agriculture and the said Department cannot be said to be an `Industry' and, therefore, no benefit of industrial law is available to the workman. However, Mr.Mishra has argued that no evidence has been led at all by the concerned Department to substantiate its say that it was discharging any sovereign function and since there is no evidence on record, the Labour Court has rightly come to the conclusion that the concerned Department is an `Industry' and, therefore, the workman is entitled to all the benefits of the I.D. Act. On merits, after appreciating the evidence on record, it has been found that the concerned workman has served 240 days and his services were illegally terminated. Looking to the reasoning given by the Labour Court especially regarding the fact that his juniors were continued in service, it cannot be said that the Labour Court has committed any error of law or jurisdiction in passing the impugned Award. However, Mr.Mishra has fairly submitted that his client is willing to forgo back wages for the period from 1.4.1989 to 31.1.1991, because, according to the State Government, for the aforesaid period, the workman abandoned the services, though, of course, the Labour Court has not believed the same. Still, Mr.Mishra says that in order to put an end to the dispute, especially when the employee is starving, he is willing to forgo the

back wages for the aforesaid period. Mr.Mishra has also further stated that his client will be accepting only 50% of the back wages for the period between 1.2.1991 and 31.1.1999 and from February, 1999, he is willing to accept only 70% of the back wages till he is actually reinstated in service on the original post.

In view of the aforesaid concession of Mr.Mishra, the Award of the Labour Court is required to be modified to the said extent. It is, however, clarified that the Department will give all other benefits to the concerned workman. It is directed that the concerned workman will be reinstated in service with effect from February, 1999 and from that day, he will be paid all his regular salary as per Rules. Subject to the concession given by Mr.Mishra, it is clarified that the concerned workman will not be entitled to the salary for the period between 1.4.1989 and 31.1.1991 and the Department will reinstate him in service with effect from February, 1999 with continuity of service and from that date, he will be paid salary as per the Rules. The Government is directed to comply with this order on or before 31st January, 2001 and whatever wages are required to be paid as per this modified order, the same will be paid on or before 31st October, 2001.

Subject to the aforesaid modification, rest of the Award of the Labour Court is confirmed. Rule is accordingly made absolute with no order as to costs.

21st November, 2000 (P.B. Majmudar, J.)

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(apj)